HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos.402, 403, 404, 405, 413, 414, 415, 416 and 451 of 2007

Writ Appeal No.402 of 2007

Between:

The Chancellor,
Dr.N.T.R. University of Health Sciences,
Hyderabad and another

... Appellants

And

Kondapavuluri Benod Kumar and others.

... Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri C.V. Mohan Reddy, Senior Advocate, assisted by Shri D.V. Nagarjuna Babu.

Counsel for respondent Nos.1 to 19 : Shri K. V. Bhanu Prasad

Counsel for the respondents in some of the connected appeals : Shri V. Venkataramana
Shri M. Ratna Reddy.

20th July, 2007

Per G.S. Singhvi, CJ

Whether the Vice-Chancellor of Dr. N.T.R. University of Health Sciences (for short, 'the University') could, in exercise of the power of supervision and control vested in him under

Section 12 (2) of the NTR University of Health Sciences Act, 1986 (for short, 'the Act') facilitate re-verification of the answer scripts of 1st year MBBS examination held in 2006 which, as will be seen hereinafter, ultimately turned out to be an exercise for revaluation and whether the Executive Council of the University could cancel the revised result announced on 2.2.2007 are the main questions, which arise for determination in these appeals filed by the Chancellor and the University against order dated 1.5.2007 passed by the learned Single Judge in Writ Petition No.8658 of 2007 and batch.

For deciding the above noted questions, we have culled out the facts from the pleadings of the parties and the files and records produced by Sri D.V. Nagarjuna Babu, Standing Counsel for the University.

The respondents joined 1st year of MBBS course in 2006-07 in different private medical colleges affiliated to the University. They appeared in the examination held from 5th September to 10th October, 2006 in the subjects of Physiology, Anatomy and Bio-Chemistry (two papers each). The result of the examination was declared on 02.12.2006. Out of 4076 candidates, who appeared in the examination, 992 were declared "fail" in different papers. A substantially large number (436) of them applied for re-totalling for which provision has been made by Resolution No.XXII passed by the Executive Council of the University in its meeting held on 11.1.1989. The process of re-totalling was undertaken from 29.1.2007 to 31.1.2007. At that stage, some representations were submitted to the University on behalf of the students in the name of M.B.B.S. 1st year Students Parents Association with the complaint of improper valuation and under-valuation of the answer scripts. Similar

representations were made to the Chancellor of the University, the Chief Minister and the Minister for Medical, Health and Family Welfare. The same were forwarded to University. Some of the failed students also met the Registrar and made request for re-valuation. On 3.1.2007, the University constituted a committee comprising of Prof. Honeyman, Head of the Department of Anatomy, Kurnool Medical College, Dr. Malleswari, Professor and Head of the Department of Physiology, Guntur Medical College, Guntur and Dr. K.L. Prabhakar Reddy, Professor and Head of the Department of Bio-Chemistry, Siddartha Medical College, Vijayawada for re-verification of the answer scripts. Subsequently, Dr. G.S.R. Sharma, M.D., Professor and Head of the Department of Physiology, Guntur Medical College was nominated to the committee because Dr. Malleswari expressed her inability to attend the work. The members of the committee attended the University and undertook the so-called re-verification, which has also been described in the records of the University as re-examination of the answer scripts and recorded marks on printed slips of papers, which were stapled at the top of the answer scripts. According to the writ petitioners, the process of re-verification/re-examination took about ten days, but the note sheets made available by the learned counsel for the University and affidavits filed on its behalf contain different versions of the actual days during which the process of the so-called re-verification was undertaken. The note recorded by Superintendent, Assistant Registrar (Examination) and Registrar on 31.1.2007, which also bear the signatures of the Vice-Chancellor with the date as 1/2, reveal that the committee attended the University on 13th and 14th January, 2007 and completed the re-examination of answer scripts and returned the same. However, in the affidavits filed on behalf of

the University by Sri G.V. Sankara Rao, Legal Officer in Writ Petition No.2925 of 2007 – P.N.Swathi Lavanya and others v. Dr. N.T.R. University of Health Sciences, and batch, as also in the affidavit filed by Sri A. N. Murthy, Joint Registrar (Examination) in Writ Petition No.8819 of 2007, the dates of re-examination have been mentioned as 17th and 18th January, 2007. Some answer scripts, which were left out from the process of re-verification/re-examination, were sent to one or the other member of the committee, who is said to have again undertaken that exercise and returned the same to the University. On 2.2.2007, the University declared the revised result and, thereby, 294 of the students, who applied for re-totaling, were declared "pass".

In the meanwhile, the University received communications from the Minister for Medical, Health and Family Welfare along with a complaint that irregularities were committed in the process of re-verification/re-examination. A similar complaint was received by the Vice-Chancellor through e-mail with allegations against the Examination Section and the Registrar of the University. In the backdrop of these complaints, the matter was placed before the Executive Council for ratification of the action taken by the University i.e. re-totalling and re-verification of answer scripts. Item 5 of the Agenda, which was placed for consideration in 168th meeting of the Executive Council held on 10.2.2007, was as under:

"**ITEM -5**

TO CONSIDER THE DECIDE THE ACTION TAKEN i.e. RETOTALLING AND REVERIFICATION OF ANSWER SCRIPTS RELATED TO 1st MBBS EXAM HELD IN SEPTEMBER/OCTOBER, 2006.

***

The 1st MBBS exams were conducted in the month of Sept/Oct,2006 and results were declared in the month of December, 2006 and the re-totalling of the scripts was allowed from 28-12-2006 to 30-12-2006.

During re-totalling 435 students complained that all the three papers

(Anatomy, Physiology and Biochemistry) were not valued properly and the examiners were harsh in their valuation and awarded zero marks for some questions though some points were correct. The parents of these students also represented that the evaluation was not fair. As the pass percentage of the colleges (from which these students came was less (80%) compared to other colleges where the pass percentage was more than 90%) the Hon'ble Vice-Chancellor assured them to have the answer papers reconsidered.

Accordingly the following committee has been appointed to reexamine the answer sheets.

1) Dr. K.Prabhakara Rao, Prof. & H.O.D. of Biochemistry, Siddartha Medical College, Vijayawada.
2) Dr. Haniman, Prof. & H.O.D. Anatomy, Kurnool Medical College, Kurnool.
3) Dr. G.S.R. Sarma, Prof. & H.O.D. of Physiology, Siddartha Medical College, Vja.

The committee met at Dr. N.T.R. University of Health Sciences on 13.01.2007 & 14.1.2007 and gone through the answer scripts of all the three subjects (e.g. Anatomy, Physiology and Biochemistry) belonging to these students and as a result of the same, the marks awarded were revised and communicated to the respective colleges on 02.01.2007 (Approx. result of 294 candidates).

The matter is placed before the Executive Council to ratify the action taken by the University i.e. reexamination of the answer sheets of First MBBS Course.

Matter for decision:

To ratify the action taken by the University i.e. re-totalling and re-verification of answer scripts related to 1st MBBS examinations held in Septemebr/October, 2006."

The Executive Council did not approve the action of the Vice-Chancellor and other functionaries and resolved to ask the State Government to constitute a High-level Committee to verify the following aspects:

"1) To find out the circumstances under which reconsideration (re-verification) of answer scripts was taken.

2) To find out whether any irregularities happened while carrying the above work."

Simultaneously, it was also decided to withhold the revised result till

the receipt of the enquiry report.

In furtherance of the aforementioned resolution, letter dated 10.2.2007 was sent to the State Government for constituting an enquiry committee. After two days, fax messages were sent to the Principals of all the colleges informing them about the decision of the Executive Council.

The above decision of the Executive Council was challenged by the students in Writ Petition Nos.2926, 2986, 2997, 3017, 3056, 3135, 3136, 3151, 3161, 3213, 3237, 3303, 3625 and 2767 of 2007. Some of the students, who did not apply for re-totalling, also filed Writ Petition Nos.4053, 4113, 4954 and 4968 of 2007 for issue of a direction to the University to undertake re-verification/re-examination of their answer scripts as well. One writ petition i.e. W.P.No.6897 of 2007 was filed for cancellation of the entire process of re-verification/re-examination.

In the context of the above litigation, the matter was referred by the University to the Advocate General of the State, who opined that the revised result should be cancelled because revaluation of the answer scripts is legally impermissible. The matter was then considered by the Executive Council in its 169th meeting held on 2.4.2007. The Vice-Chancellor of the University informed the members of the Executive Council that revaluation was undertaken by the University in good faith under circumstances of pressure created by the parents and students, who failed in the examination. After considering his version and the opinion of the Advocate General, the Executive Council decided that the whole process of revaluation be cancelled and an opportunity be given to the failed students to re-appear in the examination scheduled to be held from 25.4.2007. For the sake of reference, the relevant extracts of

resolution dated 2.4.2007 are reproduced below:

"The Executive Council met on 02.04.2007 and discussed the various issues in the light of the reply received from the Principal Secretary, HM & FW Dept., on the request made by the Executive Council in its last meeting held on 10.02.2007 regarding 1st MBBS examinations held in Sept/Oct,2006.

The Vice-Chancellor has informed the Hon'ble members of the Executive Council that the revaluation was undertaken by the University in good faith under circumstances of pressure created by the parents and students who failed in the examination.

However, the Executive Council agrees with the opinion of learned Advocate General, High Court of A.P., Hyderabad that the revaluation is not legal and liable to be cancelled and it results in dilution of the standards of education. The University also does not have the provision of revaluation of answer scripts.

It is, therefore, unanimously resolved that the whole process of revaluation should be cancelled and the students who failed in Sept/Oct, 2006 examination to reappear in the University exam that is scheduled from 25th April, 2007.

The resolution to be referred to His Excellency Chancellor, NTR UHS for approval."

(underlining is ours)

The Chancellor of the University approved the above reproduced resolution. This was conveyed to the University by the Principal Secretary to Government, Health, Medical and Family Welfare Department vide his letter dated 18.4.2007.

The respondents challenged the cancellation of the revised result in Writ Petition No.8819 of 2007 and batch mainly on the ground that the decision of the Executive Council is ultra vires the provisions of the Act. They defended the action taken by the Vice-Chancellor by asserting that he had done so in exercise of the power vested in him under Section 12(3) of the Act. They pleaded that the original valuation was not done properly and, on that account, more than 20% of the students were declared "fail" necessitating revaluation of the answer scripts. Another plea taken by the

respondents was that the result of re-verification/re-examination could not have been scrapped without giving the affected students action-oriented notice and opportunity of hearing.

In the counter-affidavit filed in Writ Petition No.8819 of 2007, Shri A.N. Murthy, Joint Registrar (Examination), narrated the background in which re-examination of the answer scripts was done by three member committee. He made a reference to the applications filed by the students for re-totalling of the marks, the representations made by the parents association to the Vice-Chancellor and others and the former's decision to constitute three member committee for re-verification of the answer scripts. Shri Murthy then averred that the Executive Council did not approve the exercise done by three member committee because there is no provision in the Statutes for revaluation of the answer scripts. He also pleaded that the revised result was cancelled in pursuance of the decision taken by the Executive Council.

The learned Single Judge, after taking note of the factual matrix of the case and Section 12 of the Act, held that in exercise of the power vested in him under Section 12 (2), the Vice-Chancellor could order re-verification of the answer scripts and the Executive Council did not have the power to nullify his action. The learned Single Judge referred to the judgments of the Supreme Court in **State of Orissa v. Prajnaparamita Samanta**[1] and **President, Board of Secondary Education v. D. Suvankar**[2] and held that the Vice-Chancellor did not commit any illegality by ordering re-verification of the answer scripts. He distinguished the judgment of the Supreme Court in **Maharashtra S.B.C.S. & H.S. Education v. Paritosh**[3] and judgment dated 22.9.2006 of the Division Bench in **N.T.R. University**

of Health Sciences, Vijayawada v. T. Deepthi and others (Writ Appeal No.960 of 2006) by observing that even though the student may not be entitled to ask for re-valuation of the answer scripts, the University can suo motu undertake that exercise. Accordingly, he set aside the decision of the Executive Council and declared that the writ petitioners shall be entitled to continue their study in the 2nd year. At the same time, the learned Single Judge observed that the order passed by him shall not be treated as a precedent for any other case and the University shall not entertain any further re-verification of the answer script of any other candidate of the same batch.

Shri C.V.Mohan Reddy, learned Advocate General appearing for the appellants argued that in terms of Section 12 (2) of the Act, the Vice-Chancellor can exercise general supervision and control over the affairs of the University and give effect to the decision of other authorities of the University, but he cannot take decision or pass an order in derogation of the statutory provisions. Learned Advocate General pointed out that the Act and the statutes framed thereunder do not contain any provision for re-verification or re-examination of the answer scripts of any examination and argued that in the purported exercise of his power of general supervision and control over the affairs of the University, the Vice-Chancellor could not have passed an order for re-verification, which ultimately turned out to be an exercise for re-valuation. He then submitted that even in exercise of emergency power under Section 12 (3) of the Act, the Vice-Chancellor cannot order or facilitate re-valuation of the answer scripts. Learned Advocate General emphasised that the entire exercise undertaken for the so-called re-examination/re-valuation was contrary to the scheme of the Act, and argued that this left the Executive Council with no option but to cancel the revised result.

Learned Advocate General referred to Statute 4 of the University Statutes, Section 19 of the Act and para 5 of the Statutes and argued that in its capacity as principal executive body of the University, the Executive Council has the powers to rescind the decision of the Vice-Chancellor and the learned Single Judge committed a serious error by nullifying resolutions dated 10.2.2007 and 2.4.2007.

Shri V. Venkata Ramana argued that the expression "general supervision and control over the affairs of the University" used in Section 12 is very wide and the Vice-Chancellor is competent to pass appropriate order and issue direction in the interest of the students. He submitted that the original valuation done by the examiners was highly arbitrary and the Vice-Chancellor must have ordered for re-verification of the answer scripts because he felt convinced that the grievance made by the students and their parents was genuine. Shri Venkata Ramana then argued that the decision of the Vice-Chancellor to appoint three member committee for re-verification of the answer scripts, which, later on, turned out to be an exercise for re-valuation, was in consonance with the scheme of Section 12 of the Act and the learned Single Judge rightly upheld the same. In the end, he submitted that even if the Court comes to the conclusion that the revaluation of answer scripts could not have been undertaken, the revised result may be restored in the interest of the students because they have already completed more than five months of study in 2nd year of MBBS course.

S/Shri K.V. Bhanu Prasad and M. Ratna Reddy argued that even though there is no provision in the Act and the Statutes for revaluation of answer scripts, the suo motu action taken by the Vice-Chancellor to appoint three member committee for re-verification of the answer scripts cannot be termed as illegal because the original

valuation of the answer scripts was full of mistakes. They further argued that re-examination done by three member committee represent correct valuation of the answer scripts and, therefore, the Division Bench may not interfere with the order of the learned Single Judge. Shri K.V. Bnahu Prasad criticised the report of four member committee constituted by the University and submitted that without undertaking valuation of the answer scripts, the committee could not have debunked the assessment made by three member committee, which was constituted in January, 2007. Learned counsel pointed out that in the year 2004, the University had undertaken similar exercise for revaluation of answer scripts and argued that the decision taken by the Vice-Chancellor to appoint three member committee for re-verification cannot be faulted. All the learned counsel submitted that the Division Bench may not interfere with the revised result announced on 2.2.2007, else, careers of the respondents will be jeopardized.

We have given serious thought to the entire matter and scrutinised the records including the answer scripts of the students who applied for re-totalling. We have also perused three files made available by the counsel for the University, which contain applications and representations made by the students and their parents, the representations forwarded by various functionaries of the government to the Vice-Chancellor. File No.08254/E1(A)/MBBS/2006/Part contains two letters dated 25.1.2007 written by Dr. A. Shanta Kumari, Associate Professor, Department of Physiology, Siddartha Medical College, Vijayawada and Dr. G.S.R. Sarma, Professor, Head of the Department, Siddartha Medical College, Vijayawada. Both have categorically stated that the questions in the two papers of Physiology were not out of syllabus.

The second file contains 86 applications made by the students in the month of February, 2007 for re-verification/re-valuation on the ground that they had not applied earlier for re-valuation because there is no provision in the Act for doing so.

The original note sheets produced by the learned counsel for the University are worth noticing. The same read as under:

"1. As per the orders of Hon'ble Vice-Chancellor on the representations of the parents/students of 1st MBBS – September/October, 2006, we may constitute the following Committee as directed by Registrar to examine/reverification the answer sheets of Physiology, Anatomy and Biochemistry.

1. Honeyman, M.D., Prof. I/c. & HOD of Anatomy, Kurnool Medical College, Kurnool.
2. Dr.Malleswari, Prof. & HOD of Physiology, Guntur Medical College, Guntur
3. Dr.K. Prabhakara Rao, Prof. & HOD of Biochemistry, Siddhartha Medical College, Vijayawada.

Sd/-	Sd/-	Sd/-
	Regr.	V.C.
3/1/07	3/1/07	3/1/07

2. As Dr.Malleswari, Prof & HOD of Physiology, GMC, Guntur expressed her inability to attend to the above work, Dr.G.S.R. Sarma, MD, Prof. & HOD of Physiology, GMC, Guntur is appointed to complete work on 13.1.'07 and on 14.1.07.

P.F.A. of V.C.

Sd/-
V.C.
23/1/07

3. O.N.dt.25/01/2007

Submitted:

Ref: Lr.No.A3/77/8/2007, dt.12.1.2007 for the Secretary to Government of A.P.

Letter received from the Secretary to Government in the ref. cited may kindly be seen.

4. As per the Endt. Of the Vice Chancellor on the above letter, the draft letter is prepared and placed below for kind approval.

Sd/- Sd/- Sd/- Sd/-
Supdt. JR Regr.
25/01 25/1

Sd/-
Vice-Chancellor
25/1

O.N.dt.29/01/2007
Submitted

5. It is submitted that the following Answer Scripts of I MBBS Course are not re-examined by the concerned HOD's.

Biochemistry – 1 No. (Paper I)
Anatomy - 2 Nos. (Paper I + Paper II)
Physiology- 1 No. (Paper II)
- - - - -
Total: 4 scripts
- - - - - - -

6. Hence, if pleased, the above scripts may be sent to the concerned Prof. & HODs. of Siddhartha Medical College for re-verification.

7. Submitted for kind perusal and for orders.

Sd/- Sd/- Sd/-
AR (E) JR(E)
29/01 29/1/07

The above contd.
Regr.

8. Professors who were involved in the process of reconsideration may be called to attend to the university on 30.1.'07 and complete the work.

Sd/- Sd/-
29/1/07 29/1/07
Regr. Vice Chancellor

O.N. dt.31.1.2007
Re-submitted

9. As per the above orders, the answer scripts of the students of all three subjects were handed over to the Members of the above committee on 13.1.2007. The committee attended the NTRUHS on 13th and 14th Jan 2007 and completed the re-examination of the answer scripts and returned the same.

10. It may be seen that as a result of re-examination, there are some changes in the marks awarded and change in the result also in case of

some students.

11. In view of the above, file is submitted for further directions/ orders in the matter please.

Sd/- Sd/- Sd/- Sd/-
31/01 31/1/07 31/1
Supdt. AR (Exm) Regr.

Sd/-
V.C.
1/2

Submitted for perusal

12. A committee of 3 professors of Anatomy, Biochemistry and Physiology were appointed in the university on 12-1-07 and they were requested to complete the work within 2 days. But it couldn't be completed within 2 days because of the large number of scripts.

13. On verification of the scripts submitted by the professors, six scripts were left not valued. Again those scripts were given to the same team to value.]

14. The team valued the scripts and submitted to the university.
Submitted for perusal & orders.

15. Sd/- Results may be declared
2/2/07 Sd/-

O.N. dt.2-02-2007
Re-submitted

16. As per the above orders of the Vice Chancellor, the draft result copy is prepared and placed below for kind approval.

Sd/- Sd/- Sd/- Sd/-
2/02 2/2/07 2/2
Supdt. AR (Exm.) JR (E) Regr.

17. As directed by Hon'ble V.C. a draft letter addressed to all the PPLs of Medical Colleges not to give effect to the results of the re-examination/re-verification till further order is placed below for approval.

18. Submitted for perusal & orders.

Sd/- Sd/- Regr. Sd/- 8/2
8/2/07 8/2/07 Vice-Chancellor

19. The reasons for ordering for reconsideration of the scripts of the candidates that applied for retotalling be furnished.

The circumstances that forced the university to appoint a committee to examine/revalue the answer sheets of Physiology, Anatomy and Biochemistry to be furnished immediately.

Sd/- 8/2/07

20. The circumstances under which the committee was appointed are explained in Page 1. Further, the committee was appointed on the suggestion (Members of the Committee) of the Registrar.

Sd/- 8/2/07
Regr.

21. The file was handed over personally to V.C.

Sd/- 8/2/07

22. The file was handed over to me today (12-2-07) for preparing a draft letter addsd to all the Principals of Medical Colleges not to give effect to the retotalling/reverifiction results.

23. Accordingly a draft letter is put up below for approval.

Sd/-12/2/07 Sd/- Regr. Sd/- 12/2 V.C."

Sections 2(e), 12, 18, 19 and 20 of the Act and Statutes 5(1) and (16), 8(1) and (2) of the Statutes, which have bearing on the decision of the appeals, read as under:

"**2. Definitions:-**

(e) "Authority" means any Authority of the University specified in Section 18;

12. The Vice-Chancellor:-

(1) Vice-Chancellor shall be appointed by the Chancellor from out of a panel of names in the alphabetical order which shall not be less than three, but not more than five, suggested by a Committee consisting of-

(i) a nominee of the Chancellor;

(ii) a nominee of the Government who shall also be the Convenor of the Committee; and

(iii) a nominee of the Executive Council;

Provided that no employee of the University or member of any authority of the University shall be a member of the Committee.

(2) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.

(3) The Vice-Chancellor may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him on such matter:

Provided that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Chancellor whose decision thereon shall be final:

Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice-Chancellor under this sub-section shall have the right to appeal against such action to the Executive Council within three months from the date on which the decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice-Chancellor.

(4) The Vice-Chancellor shall exercise such other powers and perform such other functions as may be prescribed by the Statutes or Ordinances.

18. Authorities of the University:- The following shall be the authorities of the University, namely:-

(i) The Executive Council;

(ii) The Academic Senate;

iii) The Planning Board;

(v) The Finance Committee;

(v) The Boards of Studies; and

(vi) Such other bodies as the Statutes may declare to be authorities of the University.

19. The Executive Council and its powers and functions:-

(1) The Executive Council shall be the principal executive body of the University.

(2) The constitution of the Executive Council and its powers and functions shall be prescribed by the Statutes.

20. Academic Senate and its powers and functions:-

(1) The Academic Senate shall be the principal academic body of the University and shall, subject to the provisions of this Act, Statutes and

Ordinances, co-ordinate and exercise general supervision over the academic policies of the University.-

(2) The Constitution of the Academic Senate and its powers and functions shall be prescribed by the Statutes.

Statutes

5. The Executive Council shall have the following powers, namely:-

(1) to make statutes and amend or repeal the statutes;

(16) to regulate and determine all matters concerning the University in accordance with this Act and the statutes;

8. (1) The Academic Senate shall have power, subject to the provisions of this Act, the Statutes and the regulations to prescribe all courses of study and determine the curricula and have general control of teaching within the University and be responsible for the maintenance of the standards thereof. It shall have power to make regulations consistent with this Act and the statutes relating to all academic matters which by this Act or the Statutes may be provided for by regulations and to amend or repeal such regulations.

(2) In particular and without prejudice to the generality of the foregoing power, the Academic Senate shall have power--

(a) to advise the Executive Council on all academic matters including the control and management of the libraries;

(b) to make recommendations to the Executive Council for the institution of academic posts and in regard to the duties and emoluments thereof;

(c) to make recommendations to the Executive Council for the recognition of teachers in affiliated and recognised colleges and institutions;

(d) to formulate, modify or revise schemes for the constitution or reconstitution of departments of teaching;

(e) to make regulations regarding the admission of students to the University;

(f) to make regulations regarding the examinations of the University and the conditions on which students shall be admitted to such examinations;

(g) to make regulations, prescribing equivalence of examinations, degrees and diplomas of other Universities and Boards;

(h) to make regulations relating to courses of study leading to degrees, diplomas and titles in the University;

(i) to make regulations prescribing the manner in which exemptions relating to the admission of students to examinations may be given;

(j) to make recommendations to the Executive Council regarding post-graduate teaching and research;

(k) to make regulations for collaboration, co-ordination and reciprocity with other Universities and Institutions in India abroad with a view to promote academic life."

We may also take note of resolution No.XXII, dated 11.1.1989 passed by the Executive Council, whereby provision for re-totalling was introduced. The same reads as under:

"AGENDA ITEM – 4

TO CONSIDER the question of fixing a fee for retotalling of marks of valued scripts in Under-Graduate courses.

N O T E: One candidate who appeared for 1st year B.H.M.S. of A.P. University of Health Sciences and who failed in one subject has applied for retotalling of marks. Framing of rules in this behalf and fixing a fee for it is submitted for approval. The candidate should apply along with fee prescribed within one month from the date of publication of results and the retotalling of marks will be done on receipt of the prescribed fee. There may be no revaluation. If any answer to a question is not found valued in the script the same will be got valued by the same examiner and the fee paid by the candidate is refundable if any mistake is found. There is no revaluation in Professional Courses.

MATTER FOR DECISION:

1. Whether retotalling of marks within one month after the date of publication of results may be permitted.
2. Fixing fee for retotalling.
3. Whether identification of answer script may be permitted and if so to fix a fee for it separately."

4. CONSIDERED the question of fixing the fee for retotalling of marks of valued scripts in undergraduate courses.

RESOLVED to accept the proposal of retotalling of marks within one month after the date of publication of results.

FURTHER RESOLVED to fix Rs.500/- as fee for "Retotalling and identification of answer script."

ALSO RESOLVED that

i) the retotalling be got done by more than one Professor.
ii) The additional sheets issued to the candidates must be signed by the invigilator.
iii) The invigilator should note the number of additional sheets used by the candidates on their respective Main Answer Book.

5. CONSIDERED the rates proposed on payment of remuneration for all the examinations.

RESOLVED to approve the following rates.

Sd/-
REGISTRAR
N.T.R. University of Health Sciences
VIJAYAWADA – 520 008"

There is no dispute between the parties that the Act and Statutes do not provide for revaluation of the answer scripts or even re-totalling. However, in furtherance of resolution passed by the Executive Council on 11-1-1989, the University has been providing facility of re-totalling by putting a notice to that effect at the time of declaration of result. This is the reason why, after the declaration of the result on 2.12.2006, 436 of 992 candidates, who were declared "fail" could apply for re-totalling.

The moot question which needs consideration in these appeals is whether in the absence of any provision in the Act and the Statutes, the Vice-Chancellor of the University could order re-verification of the answer scripts and the exercise of re-verification could be converted into wholesale re-valuation. A somewhat similar question was considered by the Supreme Court in **Maharashtra State Board of Secondary and Higher Education v. Paritosh Bhupeshkumar Sheth** (supra) and answered in negative. In that case, the Supreme Court considered the question whether a candidate has a right to demand inspection, verification and revaluation of answer books and whether the regulations framed by the Board excluding the right of revaluation are unreasonable and arbitrary. A Division Bench of Bombay High Court had struck down Regulation 104(3) of the Regulations framed by the Board which debarred a candidate from seeking disclosure or inspection of the answer books and other connected documents on the ground of confidentiality. However, on

the issue of revaluation of the answer books, the Judges constituting the Bench could not reach an agreement. One Judge held that the prohibition contained in Regulation 104 (1) against the revaluation of answer books was illegal. The other Judge expressed doubts on this issue, but ultimately agreed with the conclusion recorded by the first Judge. On appeal, the Supreme Court considered whether Regulation 104(3) was ultra vires to the regulation-making power of the Board and observed:

> "……The High Court was of the view that the said contention of the petitioners had to be examined against the backdrop of the fact disclosed by some of the records produced before it that in the past there had been a few instances where some students possessing inferior merits had succeeded in passing off the answer papers of other brilliant students as their own by tampering with seat numbers or otherwise and the verification process contemplated under Regulation 104 had failed to detect the mischief. In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of delegated legislation – whether a rule or regulation or other type of statutory instrument – is in excess of the power of subordinate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the Court to substitute its own opinion for that of the Legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the Court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the Legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can

best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the statute. Though this legal position is well-established by a long series of decisions of this Court, we have considered it necessary to reiterate it in view of the manifestly erroneous approach made by the Court to the consideration of the question as to whether the impugned clause (3) of Regulation 104 is ultra vires. In the light of the aforesaid principles, we shall now proceed to consider the challenge levelled against the validity of the Regulation 104(3)."

The Supreme Court then examined the reasons assigned by the High Court for declaring Regulation 104(3) as ultra vires to Section 36 of the Maharastra Secondary and Higher Secondary Boards Act, 1965 and proceeded to observe:

" …. We do not, therefore, find it possible to accept as correct the view expressed by the High Court that clause (3) of Regulation 104 is ultra vires on the ground of its being in excess of the regulation-making power conferred on the Board. Instead of confining itself to a consideration whether the impugned regulations fall within the four corners of the statute and particularly of Section 36 thereof which confers the power to make regulations, the High Court embarked upon an investigation as to whether the prohibition against disclosure and inspection of answer books and other documents imposed by the impugned clause (3) of Regulation 104 would, in practice, effectively serve the purpose of the Act ensuring fair play to the examinees. The High Court was of the opinion that in deciding the question as to whether the impugned clause was ultra vires, the Court had to bear in mind "the glaring deficiencies" found to exist in the working of the system in spite of all the elaborate precautionary measures taken for preventing such lapses which were detailed in the affidavit in reply and "the far-reaching implications of the said deficiencies on the future of the examinees" and it went on to observe that the "nexus or absence thereof between the purposes of the Act or the purpose of the examination and the prohibition against inspection in the impugned clause can be discovered only by reference to

these facts". Then the High Court proceeded to make following further observations:

> The examinee is the person affected by miscalculation of totals, omissions to examine any answer, misplacement of the supplementaries of the answer books and misplacement or tampering with the said record in any manner, if any. Adverse result creates suspicion in his mind about the possible errors in the system and his claim to inspection against this background must be held to be reasonable and calculated to subserve the purposes of the examination as also the overall purposes of the Act. This enables him to verify if his suspicions are ill or well founded. Existence of some overriding factors alone can justify denial of his claim.

The High Court concluded the discussion by stating: "Such confidentiality cannot be found to be serving any purpose of the Act merely because it was acquiesced in the past or accepted without challenge. According to Mr. Setalvad, authority to treat these documents confidential is implicit in the very power to hold the examination itself, it being necessary to secure effective achievement of the process. This is too broad a statement to admit of any scrutiny. No such power can, however, be implied unless its indispensability of treating the question papers, and names of the question setters and examiners confidential, up to a certain stage can easily be appreciated. Their premature disclosure or exposure may defeat the purpose of examinations and make a mockery of its very conception. It is, however, difficult to see any purpose of continuing to keep them confidential at any rate after the declaration of the results.

In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act

and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. None of these vitiating factors are shown to exist in the present case and hence there was no scope at all for the High Court to invalidate the provision contained in clause (3) of Regulation 104 as ultra vires on the grounds of its being in excess of the regulation-making power conferred on the Board. Equally untenable, in our opinion, is the next and last ground by the High Court for striking down clause (3) of Regulation 104 as unreasonable, namely, that it is in the nature of a bye-law and is ultra vires on the ground of its being an unreasonable provision. It is clear from the scheme of the Act and more particularly, Sections 18, 19 and 34 that the Legislature has laid down in broad terms its policy to provide for the establishment of a State Board and Divisional Boards to regulate matters pertaining to secondary and higher secondary education in the State and it has authorized the State Government in the first instance and subsequently the Board to enunciate the details for carrying into effect the purposes of the Act by framing regulations. It is a common legislative practice that the Legislature may choose to lay down only the general policy and leave to its delegate to make detailed provisions for carrying into effect the said policy and effectuate the purposes of the statute by framing rules/regulations which are in the nature of subordinate legislation. Section 3(39) of the Bombay General Clauses Act, 1904, which defines the expression 'rule' states: "Rule shall mean a rule made in exercise of the power under any enactment and *shall include any regulation made under a rule or under any enactment"*. It is important to notice that a distinct power of making bye-laws has been conferred by the Act on the State Board under Section 38. The Legislature has thus maintained in the statute in question a clear distinction between 'bye-laws' and 'regulations'. The bye-laws to be framed under Section 38 are to relate only to procedural matters concerning the holding of meetings of the State Board, Divisional Boards and the Committee, the quorum required, etc. More important matters affecting the rights of parties and laying down the manner in which the provisions of the Act are to be carried into effect have been reserved to be provided for by regulations made under Section 36. The Legislature, while

enacting Sections 36 and 38, must be assumed to have been fully aware of the niceties of the legal position governing the distinction between rules/regulations properly so called and bye-laws. When the statute contains a clear indication that the distinct regulation-making power conferred under Section 36 was not intended as a power merely to frame bye-laws, it is not open to the Court to ignore the same and treat the regulations made under Section 36 as mere bye-laws in order to bring them within the scope of justifiability by applying the test of reasonableness."

The next issue considered by the Supreme Court was whether a provision, which is akin to bye-laws, can be struck down on the ground of unreasonableness and observed:

"The legal position is now well-established that even a bye-law cannot be struck down by the Court on the ground of unreasonableness merely because the Court thinks that it goes further than "is necessary" or that it does not incorporate certain provisions which, in the opinion of the Court, would have been fair and wholesome. The Court cannot say that a bye-law is unreasonable merely because the Judges do not approve of it. Unless it can be said that a bye-law is manifestly unjust, capricious, inequitable, or partial in its operation, it cannot be invalidated by the Court on the ground of unreasonableness. The responsible representative body entrusted with the power to make bye-laws must ordinarily be presumed to know what is necessary, reasonable, just and fair. In this connection, we may usefully extract Kruse v. Johnson (1898) 2 QB 91, 98, 99 : 78 LT 647 : 46 WR 630 (DC) (quoted in Trustees of the Port of Madras v. Aminchand Pyarelal (1976) 1 SCR 721, 733 : (1976) 3 SCC 167, 178 : AIR 1975 SC 1935) (SCC p. 178, para 23) :

When the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, accompanied by the checks and safeguards which I have mentioned, I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, 'benevolently interpreted', and credit ought to be given to those who have to administer them that they will be reasonably administered. The learned chief Justice said further that there may be

> cases in which it would be the duty of the Court to condemn bye-laws made under such authority as these were made (by a county council) as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, "Parliament never intended to give authority to make such rules ; they are unreasonable and ultra vires". But it is in this and in this sense only, as I conceive, that the question of reasonableness or unreasonableness can properly be regarded. A bye-law is not unreasonable merely because particular Judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by an exception which some Judges may think ought to be there.
>
> We may also refer with advantage to the well known decision of the Privy Council in Slattery v. Naylor {(1888 13 AC 446 : 59 LT 41 : 36 WR 897 (PC)}, where it has been laid down that when considering whether a bye-law is reasonable or not, the Court would need a strong case to be made against it and would decline to determine whether it would have been wiser or more prudent to make the bye-law less absolute or will it hold the bye-law to be unreasonable because considerations which the Court would itself have regarded in framing such bye-law have been overlooked or rejected by its framers."

The Supreme Court rejected the theory that revaluation of answer scripts is a part of fair play in the State action and held:

> "We are unable to agree with the further reason stated by the High Court that since "every student has a right to receive fair play in examination and getting appropriate marks matching his performance." It will be a denial of the right to such fair play if there is to be a prohibition on the right to demand revaluation and unless a right to revaluation is recognized and permitted there is an infringement of rules of fair play. What constitutes fair play depends upon the facts and circumstances relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided

> to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages and that measures for detection of malpractice, etc. have also been effectively adopted, in such cases, it will not be correct on the part of the Courts to strike down the provision prohibiting revaluation on the ground that it violates the rules of fair play.
>
> ……. We do not consider it necessary to burden this judgment with a recapitulation of all the details furnished in those paragraphs, and it would suffice to state that the procedure evolved by the Board for ensuring fairness and accuracy in evaluation of the answer books has made the system as foolproof as can be possible and it meets with out entire satisfaction and approval. Viewed against this background, we do not find it possible to agree with the views expressed by the High Court that the denial of the right to demand a revaluation constitutes a denial of fair play and is unreasonable. The Board is a very responsible body. The candidates have taken the examination with full awareness of the provisions contained in the regulations and in the declaration made in the form of application for admission to the examination they have solemnly stated that they fully agree to abide by the regulations issued by the Board. In the circumstances, when we find that all safeguards against errors and malpractices have been provided for, there cannot be said to be any denial of fair play to the examinees by reason of the prohibition against asking for revaluation."

The same is the ratio of the Supreme Court's judgment in **Goa, Daman and Diu Board of Secondary Education v. Kumari Hema Laad**[4].

We may also notice two judgments of the Supreme Court in **State of Orissa v. Prajnaparamita Samanta** and **President, Board of Secondary Education v. D. Suvankar** (supra), on which reliance has been placed by the learned counsel for the respondents. The facts of **Prajnaparamita Samanta** (supra) were that the students who appeared in the entrance examination held for the academic year

1991-92 had complained that 38 questions were either out of syllabus or were such for which key answers were wrong and correct answers were available in the alternative answers or for which more than one answers were correct. The High Court considered the grievance of the students and concluded that there were nine questions for which the answers could be more than one. Accordingly, a direction was given to the Selection Board to re-evaluate the answer books of the examinees, who had secured a minimum of 105 marks. On appeal, the Supreme Court referred the questions to experts of Delhi University in the subjects of Chemistry, Botany and Zoology. The opinion of the experts was in tune with what had been observed by the High Court. Therefore, the Supreme Court had declined to interfere with the direction given by the High Court. This is evinced from paragraph 3 of the judgment, which is extracted below:

> "Subsequently, by our order dated 30-9-1993, we directed the experts of the Delhi University in the subjects of Chemistry, Botany and Zoology to give their opinion with regard to six of the seven key answers and the stand of the students in respect of the said answers which found favour with the High Court. The experts were to indicate whether (a) the key answers or the answers which according to the students were correct, were most appropriately the correct answers, and (b) whether both or either were wholly incorrect and if so which of them. We have since received the report of the experts. From the said report, it is found that four of the answers which according to the students were correct have been certified as such by the experts whereas two of the key answers given by the Board were found to be correct. We had undertaken this exercise only to satisfy ourselves as to whether there was truth in the grievance of the students or in the stand taken by the Board that the key answers provided by them were the most correct answers. We are satisfied on the basis of the opinion of the experts that there was much to be said in favour of the stand of the students. It may be mentioned here that we had sent only six answers for examination to the experts out of the

> seven as indicated in the earlier order, because we had found that the answer to the seventh question canvassed by the students was so obviously correct that it needed no examination at the hands of the experts. The report of the experts also validates the order of the High Court which had directed re-evaluation of the answer books of the examinees on the basis of the answers suggested by it to the nine questions. In the circumstances, taking a broad view of the entire matter, we are satisfied that it cannot be said that the impugned judgment of the High Court suffered from any infirmity. We, therefore, find no merit in the grievance of the State and dismiss the State's appeals being CA Nos. 732 and 745-54 of 1993."

In **D. Suvankar**'s case (supra), the Supreme Court considered whether the Board of Secondary Education owe any responsibility to the students in the matter of valuation of answer scripts and answered the same in affirmative. The facts of that case show that respondent No.1 appeared at the High School Certificate Examination, 2004 conducted by the appellant Board. He was declared to have passed in the first division securing 654 marks out of 750 marks. On a representation made by respondent No.1 to the Board, it was found that although he had secured 65 marks in one paper i.e. SSH, actually 35 marks were shown in the result card. It was pointed out that the mistake occurred due to the wrong entry made in the computer. The error was rectified in the Tabulation Register and fresh marks sheet was issued on 7.7.2004. On an application for re-checking, it was found that respondent No.1 had secured 71 and not 65 marks as was posted in the cover page. In other words, the actual marks secured by respondent No.1 were 690 and not 654. The writ petition filed by respondent No.1 for revaluation of the answer scripts was dismissed by the High Court, but a direction was given for payment of Rs.20,000/- in lieu of negligence of the Board. On appeal, the Supreme Court referred to

the earlier judgment in **Maharashtra State Board of Secondary and Higher Education v. Paritosh Bhupeshkumar Sheth** (supra) and then proceeded to observe:

> "…….The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities end grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to pragmatic one were to be propounded. In the above premises, it is to be considered how far the Board has assured a zero defect system of evaluation, or a system which is almost fool-proof.
>
> Award of marks by an Examiner is to be fair, and considering the fact that revaluation is not permissible under the Statute, the Examiner has to be careful, cautious and has a duty to ensure that the answers are properly evaluated. No element of chance or luck should be introduced. An examination is a stepping-stone on career advancement of a student. Absence of a provision for revaluation cannot be a shield for the Examiner to arbitrarily evaluate the answer script. That would be against the very concept for which revaluation is impermissible.
>
> It has to be ensured that the Examiners who make the valuation of answer papers are really equipped for the job. The paramount consideration in such cases is the ability of the Examiner. The Board has bounden duty to select such persons as Examiners who have the capacity, capability to make valuation and they should really equipped for the job. Otherwise, the very purpose of evaluation of answer papers would be frustrated. Nothing should be left to show even an apprehension about lack of fair assessment. It is true that valuation of two persons cannot be equal on golden scales, but wide variation would affect credibility of the system of valuation. If for the same answer one candidate gets higher marks than another that would be arbitrary. As indicated above, the scope for interference in matters of valuation of answer papers is very limited. For compelling reasons and apparent infirmity in valuation, the Court steps in……."

The Supreme Court then considered the facts of that case and observed:

> "The appellant-Board is certainly not blemishless. Undisputedly, lesser marks were shown in the marks sheet supplied to the respondent No.1. In the first marks sheet the total marks indicated were 654. Finally, marks sheet was issued showing the aggregate marks to be 690. Except putting the blame on the Computer Firm, Assistant Examiner and the Scrutinizer, nothing further has been offered by the appellant-Board as explanation. True it is the first mistake was of the computer firm but the second correction is clearly on the basis of the prayer for re-addition of marks. It was found that the marks actually secured were 71 while on the cover page of the answer sheet the marks noted as 65. For this the blame has to be fixed on the Assistant Examiner and the Scrutinizer. But that does not provide an escape route to the Board.
>
> Ultimately, it is the Board which has to ensure that the correct marks sheet is issued to the candidates since candidates who appear at the High School Certificate are of tender age. If by mistake the Board indicates to the candidates' incorrect marks, it is bound to have adverse effect on the mind of the candidates of tender age. Therefore, it is imperative on the part of the Board to ensure that errorless marks sheet is issued to each candidate. The plea of the computer firm that considering the large number of candidates the mistake is not serious has no substance. The computer entries are made to ensure accuracy and to do away with defects which arise from manually recording of marks and to ensure accuracy. The Assistant Examiner and the Scrutinizer appear to have taken their jobs casually unmindful of the consequences which result from their negligence acts. Therefore, the sum of Rs. 20,000/- has to be paid to the respondent No.1 by the Board out of which it shall recover Rs.15,000/- from Computer Firm. It appears that the Board has taken action against the Assistant Examiner and Scrutinizer for their negligence. While affirming action taken against them, we express our displeasure for their careless and negligent acts which has led to unnecessary litigation."

The principles which can be culled out from the above noted judgments are:

1) In the absence of a specific provision in the Act, Statutes or Rules, which regulate the examinations, the examinees cannot seek revaluation as of right and the High Court, in exercise of power under Article 226 of the Constitution of India, cannot issue a mandamus for revaluation of the answer scripts on the basis of self-serving assessment made by the candidate or by entertaining bald and vague assertion that the valuation has not been done properly. However, if the competent authority of the University, after examining the representation made by the students themselves or by someone on their behalf or on the basis of information/material made available from other sources, feels convinced that the valuation of the answer scripts was not done fairly or that the same is tainted by patent arbitrariness, bias or mala fides, then it can suo motu order fresh valuation and revise the result. Similar action can be taken by the competent authority in the case of objective type examination if the key answers given to the examiners are found to be incorrect or more than one correct answer of a question is possible.

2) In such matters, the Court will ordinarily refrain from exercising jurisdiction under Article 226 of the Constitution of India and will not entertain complaints of the examinees and, in the absence of statutory provision for re-valuation, compel the University or other examining authority to undertake re-valuation of the answer scripts. However, if the court comes to the conclusion that some questions are out of syllabus or the key answers given to the examiners are incorrect or more than one correct answer are possible and such apparent mistakes have affected the result of the examination, then appropriate

direction for re-examination of the answer scripts can be given. If the court finds that the assessment of answer scripts is farcical or that the same is vitiated due to mala fides, bias or fraud, then the matter can be referred to experts in the field and appropriate directions given in the light of the report of the experts.

In the light of the above, we shall now consider whether the complaint of improper valuation made by the students of 1st MBBS, either by themselves or their parents, had any substance and the Vice-Chancellor of the University was justified in constituting three member committee for re-verification of the answer scripts; whether in the garb of re-verification of the answer scripts, the members of the committee could undertake re-evaluation of the answer scripts of those who applied for re-totaling and whether the exercise of revaluation, which led to revision of the result, was farce and was rightly cancelled by the Executive Council.

In the first place, it is to be noted that the complaint made by MBBS 1st Year Students Parents Association was that some of the questions were out of syllabus; that the original valuation was done improperly, and that some of the answers were undervalued and zero marks were arbitrarily awarded. The University authorities including the Vice-Chancellor did not at all go into the merits of the allegations in the complaint to find out whether there was any grain of truth in them. The record produced by the counsel for the University including the note sheets do not show that the Vice-Chancellor had scrutinised the complaints and found prima facie merit in them. Rather, the notings recorded on 3.1.2007 shows that the Vice-Chancellor casually ordered re-verification of the answer scripts. The statement made by the Vice-Chancellor in the meeting of the

Executive Council held on 2.4.2007 demonstrates that he did not at all apply mind to the complaints made by the students and their parents and constituted three member committee under some extraneous pressure. The Vice-Chancellor's admission that he had acted under pressure created by the parents and students, who failed in the examination, which is reflected in resolution dated 2.4.2007 passed by the Executive Council, is self-speaking and negatives the argument of the learned counsel for the respondents that the Vice-Chancellor had constituted three member committee because he felt convinced that the original valuation was not done properly. In our considered view, the Vice-Chancellor could not have ordered re-verification of the answer scripts, which, later on, turned out to be an exercise for revaluation, merely for asking or on the ground that he felt pressurised by the students, who had failed in the examination or their parents. It is most unfortunate that the person, who held the exalted position of the Vice-Chancellor of the University, succumbed to the pressure of the students, went overboard and took action in utter disregard of the provisions of the Act and the Statutes.

The plain language of Section 12(2), which has been relied by the learned Single Judge for holding that the Vice-Chancellor could order re-verification of the answer scripts, does not admit of that interpretation. The power of general supervision and control vested in the Vice-Chancellor can be exercised only in furtherance of the provisions contained in the Act and not in derogation thereof. In exercise of that power, the Vice-Chancellor cannot re-write the Act or the Statutes and pass an order, which is legally not permissible. Section 12(3), which enables the Vice-Chancellor to exercise emergency power, cannot be pressed into service for sustaining the decision taken by him on 3.1.2007 because neither the affidavits filed

by the respondents nor the record produced before the Court shows that there existed any such emergency, which warranted bypassing of the statutory provisions and the principal executive body of the University i.e. the Executive Council, which is charged with the duty to ensure that all matters concerning the University are taken in accordance with the Act and the Statutes.

Even if it is assumed that the Vice-Chancellor could, in exercise of the power vested in him under Section 12(2) or Section 12(3), constitute committee for re-verification of the answer scripts, the committee could not have, without being authorized by the University to do so, undertaken the so-called exercise for re-examination/re-valuation of the answer scripts of 436 students. Since the Act and the Statutes do not provide for revaluation of the answer scripts, no procedure has been laid down by the University for revaluation of the answer scripts. However, we can take judicial notice of the practice followed in some Universities/Education Boards for re-valuation of the answer scripts wherever the statute makes such provision. In such cases, the assessment made by the first examiner/ original examiner and the marks awarded by him are concealed by pasting slips or by using some other appropriate mechanism. This is done in order to prevent the second examiner, who is assigned the task of revaluation, from knowing the assessment made by the first examiner. The second examiner makes his own assessment of the answers and independently award marks. If the second assessment so necessitates, the result already declared is revised.

The record produced by the University does not give any indication of the methodology adopted by the committee for revaluation. A careful scrutiny of the answer scripts, however, shows that the original examiners had assessed all the answer scripts

except two and awarded separate marks for each question attempted by the candidates. The assessment made by the original examiners was cross-checked and verified by another examiner. The marks were then recorded in the printed slips, which were attached at the top of the answer scripts. Thereafter, tabulation of the marks secured in various papers was done and the result was announced. When the answer scripts were sent to three member committee, the assessment made by the original examiners was not concealed. The members of the committee did not make independent assessment of the answers given by the candidates. They simply recorded marks on separate printed slips, which were stapled on the top of the answer scripts. None of the answer scripts contains any indication of the nature of the assessment made by the members of the committee in their respective subjects. Therefore, it is impossible to fathom as to how they evaluated the answers given by the candidates and awarded marks to them. The answer scripts of some of the students were shown to the learned counsel for the respondents. They were at loss to explain as to how the members of the committee awarded marks without assessing the answers. Dr.K.R. Prabhakar Rao and Dr.G.S.R. Sharma, who appeared before the Court on 17.7.2007 in the proceedings of WAMP No.1092 of 2007 filed by them along with Dr. Honeyman for their impleadment as parties (the application was subsequently dismissed as withdrawn), too could not explain as to how they had awarded marks without actually assessing the answers. It is, thus, evident that the exercise undertaken by the three member committee for re-verification/re-examination/revaluation was total farce. Therefore, the marks recorded on the printed slips (second set) stapled at the top of the answer scripts could not have been made basis for preparing and declaring revised result.

In the above backdrop, the decision taken by the Executive Council, which is the principal executive body of the University in terms of Statute 5 (16), cannot be termed as without jurisdiction or vitiated by arbitrariness. In our view, the Executive Council was under a solemn obligation to ensure that the functioning of the University is carried out in accordance with the Act and the Statutes. Therefore, it was duty bound to correct the aberration caused on account of wholly arbitrary and unwarranted decision taken by the Vice-Chancellor and farce exercise of revaluation of 436 answer scripts undertaken by three member committee.

It is extremely difficult for the Court to pinpoint the person who may be responsible for manipulating the entire show of revaluation of the answer scripts, but we do not have any doubt in our mind that the manner in which the Vice-Chancellor and the Registrar of the University conducted themselves has brought the offices held by them in disrepute. The entire sanctity of the examination system was violated and more than 50% of those who were declared “fail” on the basis of assessment done by the original examiners were declared “pass” by unscrupulous machination.

One may have sympathy with the students who failed to clear the 1st MBBS examination, but the Court cannot ignore the sanctity of the examination system, which has to be maintained at all costs. In such matters, the power of judicial review should be exercised only when the Court is satisfied that the decision taken by the academic body is wholly arbitrary or vitiated due to mala fides. In the present case, we find that the Executive Council had passed resolution to correct the grave error committed by the then Vice-Chancellor and the Registrar of the University. If the Executive Council had not interfered in the matter, the institution would have been ridiculed in the eyes of

public and its prestige would have suffered incalculable harm.

The argument of the learned counsel for the respondents that the Court may not disturb the order passed by the learned Single Judge because the same would adversely affect the careers of the respondents cannot be accepted in view of the conclusion recorded by us regarding the nature of the exercise undertaken for re-verification/re-examination and revaluation of the answer scripts.

Before parting with the case, we consider it necessary to mention that during the pendency of these appeals, the University had suo motu constituted four member committee and the report of the committee was produced before the Court on 25.6.2007. However, we have refrained from commenting on the report because after threadbare scrutiny of the entire record, we have come to the conclusion that the exercise of re-verification/re-examination/re-valuation undertaken by the University was not only legally impermissible, but was wholly arbitrary and unjustified.

In the result, the appeals are allowed, the order of the learned Single Judge is set aside and the writ petitions filed by the respondents are dismissed.

G.S. SINGHVI, CJ

July 20, 2007

C.V. NAGARJUNA REDDY, J

SVS/ARS

[1] (1996) 7 SCC 106

[2] (2007) 1 SCC 603

[3] (1984) 4 SCC 27

[4] (1984) 4 SCC 58.